

99



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,401	12/08/2003	David J. Broel	11287	9772
208	7590	07/17/2006	EXAMINER	
WALTER A. RODGERS RODGERS & RODGERS 6100 LAKE FORREST DRIVE SUITE 340 ATLANTA, GA 30328			VALENTI, ANDREA M	
			ART UNIT	PAPER NUMBER
			3643	

DATE MAILED: 07/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/728,401

Applicant(s)

BROEL, DAVID J.

Examiner

Andrea M. Valenti

Art Unit

3643

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 30 June 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

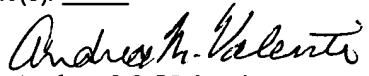
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 3 and 9.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

  
Andrea M. Valenti  
Primary Examiner  
Art Unit 3643

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,450,692 to Ruibal in view of French Patent FR 2620591 to Roder.

Regarding Claim 9, Ruibal teaches a cemetery flower holder (Ruibal #12) and a container/pot (Ruibal Fig. 1 #17) comprising a shaft (Ruibal Fig. 1 #14) and multiple elongated vertically deformable extensions (Ruibal Fig. 1 #16) extending outwardly from the shaft substantially 90 degrees thereto with the ends thereof in abutment with the inner surface of the container/pot and said extensions are deformed (this limitation inherently merely depends on the size of element #17 selected, the extensions are capable of deforming for a tight friction fit since the proposed embodiment is only 1/8 inch plastic or steel it will deform depending on the size of the selected container) by means of the length of the extensions being greater than the distance between the shaft and the inner surface of the holder said shaft comprising a base shaft (Ruibal Fig. 5 #14 below #48) and an upper shaft (Ruibal Fig. 5 #14 above #48) with a disc (Ruibal Fig. 3 #30) disposed there between, said disc comprising an upper surface.

Ruibal is silent on at least one prong extending upwardly from the upper surface. However, Roder teaches a plant support attached to a disc with a prong extending from the upper surface of the disc (Roder #4). It would have been obvious to one of ordinary

Art Unit: 3643

skill in the art to modify the teachings of Ruibal with the teachings of Roder at the time of the invention for the advantage of securing foam to the disc for floral displays as taught by Roder.

Ruibal as modified is silent on the extensions being integrally joined to the shaft. However, it would have been obvious to one of ordinary skill in the art to further modify the teachings of Ruibal at the time of the invention since the modification is merely making a known element integral [*In re Larson*, 340 F.2d 965, 967, 144 USPQ 347, 349 (CCPA 1965)] for the known advantage of reducing the likely hood of miss placing pieces; to customize it to a particular container size; and for ease of manufacturing.

Ruibal as modified teaches a container/pot, but is silent on explicitly teachings a vase. However, it would have been obvious to one of ordinary skill in the art to further modify the teachings of Ruibal at the time of the invention since the modification is merely the selection of an old and notoriously well-known alternate equivalent container selected for a desired aesthetic appearance and does not present a patentably distinct limitation.

Regarding Claim 3, Ruibal as modified teaches the end of the upper shaft remote from the disc is enlarged (Ruibal Fig. 2 #26 attaches to #14 and thus enlarges the width of the shaft).

### ***Response to Arguments***

Applicant's arguments filed 30 June 2006 have been fully considered but they are not persuasive.

Examiner maintains that the cross arms of Ruibal are capable of being deformed. Examiner reiterates the response presented in the final rejection that whether or not the extension are integral or separate from the shaft, depending on the size of the container they are placed in they, will bend/deform if the container is smaller then the length of the extension. The extensions are merely thin 1/8 inch plastic or steel (Ruibal Col. 3 line 6-7) that if forced into a small container will deform.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 571-272-6895. The examiner can normally be reached on 7:00am-5:30pm M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3643

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Andrea M. Valenti  
Primary Examiner  
Art Unit 3643

13 July 2006